

ABUSE, NEGLECT, AND DEPENDENCY**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE**General Description:**

This bill amends the juvenile courts provisions of the Utah Judicial Code.

Highlighted Provisions:

This bill:

- ▶ expands the requirements for not placing the child with a parent to include a determination that the placement would be seriously detrimental to the health and safety of the child;
- ▶ requires the court to order the Division of Child and Family Services to exert considerable efforts to determine whether there is a possible kinship placement for the child;
- ▶ requires the division to conduct an independent investigation to locate a relative who may be able and willing to care for the child;
- ▶ requires preferential treatment be given to a relative requesting the child;
- ▶ eliminates the requirement that the kinship placement be in the child's best interest;
- ▶ eliminates the requirements that the child be comfortable with the relative, that the relative recognize the parent's history of abuse, and that the relative is strong enough to resist inappropriate requests by the parent;
- ▶ requires that the relative be willing and able to act in accordance with court orders;
- ▶ expands the definition of "relative" to include anyone that has established a significant relationship with the child;



- ▶ eliminates the time period within which a relative may obtain custody and be given preferential treatment; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78-3a-307, as last amended by Chapters 153 and 255, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-3a-307** is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise seriously detrimental to the health and safety of the child. [~~The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).~~]

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court shall also provide for reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

(a) placement with the parent continues to be in the child's best interest;

(b) the child should be returned to the original custodial parent;

(c) the child should be placed with a relative, pursuant to Subsection (5); or

(d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child. The court

[may] shall order the Division of Child and Family Services to ~~[conduct a reasonable search]~~ exert considerable efforts to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child. The division shall also conduct an independent investigation in order to locate any relatives who may be able and willing to care for the child. The child may be placed in the temporary custody of the division pending that determination. This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration [may] shall be given to a relative's request for placement of the child~~[- if it is in the best interest of the child, and]~~ if the provisions of this section are satisfied.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

(A) the relative has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

~~[(B) the child is comfortable with the relative;]~~

~~[(C)]~~ (B) the relative ~~[recognizes the parent's history of abuse and]~~ is determined to protect the child;

~~[(D)]~~ (C) the relative is ~~[strong enough to resist inappropriate requests by the parent]~~ willing and able to act in accordance with court orders for access to the child, in accordance with court orders;

121 ~~[(F)]~~ (D) the relative is committed to caring for the child as long as necessary; and

122 ~~[(F)]~~ (E) the relative can provide a secure and stable environment for the child.

123 (iii) The court may order the Division of Child and Family Services to conduct any
124 further investigation regarding the safety and appropriateness of the placement.

125 (iv) The division shall complete and file its assessment regarding placement with a
126 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

127 (c) The court may place the child in the temporary custody of the division, pending the
128 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding
129 that placement. The court shall ultimately base its determination regarding placement with a
130 relative on the best interest of the child.

131 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
132 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
133 cousin, stepsibling, ~~[or]~~ sibling of the child, or has otherwise established a significant
134 relationship with the child. In the case of a child defined as an "Indian" under the Indian Child
135 Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family member" as
136 defined by that statute.

137 (6) (a) When the court vests physical custody of a child with a relative pursuant to
138 Subsection (5), it shall order that the relative assume custody subject to the continuing
139 supervision of the court, and shall order that any necessary services be provided to the minor
140 and the relative. That child is not within the temporary custody or custody of the Division of
141 Child and Family Services. The child and any relative with whom the child is placed are under
142 the continuing jurisdiction of the court. The court may enter any order that it considers
143 necessary for the protection and best interest of the child. The court shall provide for
144 reasonable parent-time with the parent or parents from whose custody the child was removed
145 unless parent-time is not in the best interest of the child.

146 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically
147 reviewed by the court, no less often than every six months, to determine whether:

148 (A) placement with the relative continues to ~~[be in the child's best interest]~~ satisfy the
149 standards required in Subsection (5)(b)(ii);

150 (B) the child should be returned home; or

151 (C) the child should be placed in the custody of the division.

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

~~[(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.]~~

~~[(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.]~~

Legislative Review Note

as of 1-9-04 10:47 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that the Department of Human Services Division of Child and Family Services will require a General Funds appropriation of \$41,600 in FY 2005; and ongoing General Funds of \$40,900 beginning FY 2006. The Division of Child and Family Services will receive Federal Funds contingent on state funding. The Attorney General will require a General Funds appropriation of \$145,000 in FY 2005; and ongoing General Funds of \$141,300 beginning FY 2006. The Administrative Office of the Courts will require an ongoing General Funds appropriation of \$69,500 beginning FY 2005.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$256,100	\$251,700	\$0	\$0
Federal Funds	\$189,400	\$186,500	\$189,400	\$186,500
TOTAL	\$445,500	\$438,200	\$189,400	\$186,500

Individual and Business Impact

No fiscal impact.
